

Mark Crabtree, OSB #015070
crabtreem@jacksonlewis.com
Daniel Moses, OSB #151935
daniel.moses@jacksonlewis.com
JACKSON LEWIS P.C.
200 SW Market St. Ste. 540
Portland, Oregon 97201
Telephone: (503) 229-0404
Facsimile: (503) 229-0405
Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

FRANCISCO GUTIERREZ, MOISES
GUTIERREZ, and RAUL GUTIERREZ,
individuals,

Plaintiffs,

vs.

VALLEYVIEW BLDG, INC., , a domestic
business corporation, and FADAY
CHERIMNOV, an individual,

Defendants.

Case No.: 3:18-cv-1701-HZ

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT**

Defendants VALLEYVIEW BLDG, INC., and FADAY CHERIMNOV ("Defendants"),
answer Plaintiffs' Complaint as follows:

I. INTRODUCTION

1.

In response to paragraph 1 of the Complaint, Defendants deny the allegations contained therein.

2.

In response to paragraph 2 of the Complaint, Defendants deny the allegations contained therein.

3.

In response to paragraph 3 of the Complaint, Defendants deny the allegations contained therein.

II. JURISDICTION

4.

In response to paragraph 4 of the Complaint, Defendants admit the allegations contained therein.

5.

In response to paragraph 5 of the Complaint, Defendants admit the allegations contained therein.

III. PARTIES

6.

Given the vague nature of the allegations in paragraph 6 of the Complaint, Defendants are without sufficient knowledge, information or belief to admit or deny the allegations and on that basis deny each and every allegation contained therein.

7.

In response to paragraph 7 of the Complaint, Defendants admit the allegations contained therein.

8.

In response to paragraph 8 of the Complaint, Defendants admit the allegations contained therein.

IV. FACTS

9.

In response to paragraph 9 of the Complaint, Defendants admit the allegations contained therein.

10.

In response to paragraph 10 of the Complaint, Defendants admit the allegations contained therein.

11.

In response to paragraph 11 of the Complaint, Defendants admit the allegations contained therein.

12.

In response to paragraph 12 of the Complaint, Defendants deny the allegations contained therein.

13.

In response to paragraph 13 of the Complaint, Defendants admit the allegations contained therein.

14.

The allegations contained in paragraph 14 of the Complaint are legal conclusions and therefore do not require an answer by Defendants.

15.

The allegations contained in paragraph 15 of the Complaint are legal conclusions and therefore do not require an answer by Defendants.

16.

In response to paragraph 16 of the Complaint, Defendants admit the allegations contained therein.

17.

In response to paragraph 17 of the Complaint, Defendants admit the allegations contained therein.

18.

In response to paragraph 18 of the Complaint, Defendants admit the allegations contained therein.

19.

In response to paragraph 19 of the Complaint, Defendants admit the allegations contained therein.

20.

In response to paragraph 20 of the Complaint, Defendants admit the allegations contained therein.

21.

In response to paragraph 21 of the Complaint, Defendants admit the allegations contained therein.

22.

In response to paragraph 22 of the Complaint, Defendants admit Plaintiffs typically worked five days each week. Defendants further admit that some weeks Plaintiffs worked less than five days each week. Defendants deny each and every other allegation contained therein, including any implied assertion that Defendants violated any legal obligation to Plaintiffs or that Defendants are responsible for any loss or harm incurred by Plaintiffs.

23.

In response to paragraph 23 of the Complaint, Defendants admit that Plaintiffs performed construction, excavation, and mechanic-related labor, purchased materials and equipment, and other tasks as assigned by Defendants. Defendants deny each and every other allegation contained therein, including any implied assertion that Defendants violated any legal obligation to Plaintiffs or that Defendants are responsible for any loss or harm incurred by Plaintiffs.

24.

In response to paragraph 24 of the Complaint, Defendants admit that Plaintiffs worked up to 45 hours in a week performing construction and excavation-related labor for Defendants. Defendants deny each and every other allegation contained therein, including any implied assertion that Defendants violated any legal obligation to Plaintiffs or that Defendants are responsible for any loss or harm incurred by Plaintiffs.

25.

In response to paragraph 25 of the Complaint, Defendants deny the allegations contained therein.

26.

In response to paragraph 26 of the Complaint, Defendants deny the allegations contained therein.

27.

In response to paragraph 27 of the Complaint, Defendants deny the allegations contained therein.

28.

In response to paragraph 28 of the Complaint, Defendants deny the allegations contained therein.

29.

In response to paragraph 29 of the Complaint, Defendants deny the allegations contained therein.

30.

In response to paragraph 30 of the Complaint, Defendants deny the allegations contained therein.

31.

In response to paragraph 31 of the Complaint, Defendants deny the allegations contained therein.

32.

In response to paragraph 32 of the Complaint, Defendants deny the allegations contained therein, including any implied assertion that Defendants violated any legal obligation to Plaintiffs or that Defendants are responsible for any loss or harm incurred by Plaintiffs.

33.

In response to paragraph 33 of the Complaint, Defendants admit the allegations contained therein.

34.

In response to paragraph 34 of the Complaint, Defendants admit the allegations contained therein.

35.

In response to paragraph 35 of the Complaint, Defendants deny the allegations contained therein.

36.

In response to paragraph 36 of the Complaint, Defendants deny the allegations contained therein.

37.

In response to paragraph 37 of the Complaint, Defendants deny the allegations contained therein.

38.

In response to paragraph 38 of the Complaint, Defendants admit the allegations contained therein.

39.

In response to paragraph 39 of the Complaint, Defendants admit the allegations contained therein.

40.

In response to paragraph 40 of the Complaint, Defendants deny the allegations contained therein.

41.

In response to paragraph 41 of the Complaint, Defendants deny the allegations contained therein.

42.

In response to paragraph 42 of the Complaint, Defendants deny the allegations contained therein.

43.

In response to paragraph 43 of the Complaint, Defendants deny the allegations contained therein.

44.

In response to paragraph 44 of the Complaint, Defendants deny the allegations contained therein.

45.

In response to paragraph 45 of the Complaint, Defendants deny they threatened Plaintiffs or their families. Defendant are without sufficient knowledge, information, or belief as to the remaining allegations in paragraph 45 and therefore deny each and every allegation contained therein.

46.

In response to paragraph 46 of the Complaint, Defendants deny the allegations contained therein.

47.

In response to paragraph 47 of the Complaint, Defendants deny the allegations contained therein.

48.

In response to paragraph 48 of the Complaint, Defendants deny the allegations contained therein.

V. CLAIMS FOR RELIEF

(First Claim—Violation of FLSA)

49.

In response to paragraph 49 of the Complaint, Defendants deny the allegations contained therein.

50.

In response to paragraph 50 of the Complaint, Defendants deny the allegations contained therein.

51.

In response to paragraph 51 of the Complaint, Defendants deny the allegations contained therein.

(Second Claim – Violation of Oregon Minimum Wage and Overtime Laws)

52.

In response to paragraph 52 of the Complaint, Defendants deny the allegations contained therein.

53.

In response to paragraph 53 of the Complaint, Defendants deny the allegations contained therein.

54.

In response to paragraph 54 of the Complaint, Defendants deny the allegations contained therein.

(Third Claim – Violation of Oregon Timely Payment of Wages Law)

55.

In response to paragraph 55 of the Complaint, Defendants deny the allegations contained therein.

56.

In response to paragraph 56 of the Complaint, Defendants deny the allegations contained therein.

(Fourth Claim – Unlawful Deductions – ORS 652.615)

57.

In response to paragraph 57 of the Complaint, Defendants deny the allegations contained therein.

58.

In response to paragraph 58 of the Complaint, Defendants deny the allegations contained therein.

(Fifth Claim – Federal Trafficking – 18 U.S.C. § 1595)

59.

In response to paragraph 59 of the Complaint, Defendants deny the allegations contained therein.

60.

In response to paragraph 60 of the Complaint, Defendants deny the allegations contained therein.

(Sixth Claim – Oregon Trafficking – ORS § 30.867)

61.

In response to paragraph 61 of the Complaint, Defendants deny the allegations contained therein.

62.

In response to paragraph 62 of the Complaint, Defendants deny the allegations contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint, and each claim for relief alleged therein, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Any recovery on Plaintiffs' Complaint, or any purported cause of action alleged therein, is barred by the equitable doctrines of consent, waiver, laches and unclean hands because of Plaintiffs' conduct and actions.

THIRD AFFIRMATIVE DEFENSE

To the extent Plaintiffs are entitled to damages, Defendants are entitled to a credit or set off against amounts paid, overpaid, or owed to Defendants by Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part as to all hours during which Plaintiffs were engaged in activities which were preliminary or postliminary to their principal activities.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part because the work performed was de minimis in nature.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of accord and satisfaction.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint, and each purported claim for relief alleged therein, is barred by the applicable statutes of limitations.

RESERVATION

Defendants reserve the right to raise additional affirmative defenses as discovery progresses and as the interests of justice require.

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WHEREFORE, having fully answered the allegations and prayers for relief set forth in Plaintiffs' Complaint, Defendants respectfully pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by their Complaint;
2. Dismissing the Complaint in its entirety with prejudice;
3. Awarding costs of suit incurred herein, including reasonable attorneys' fees; and
4. Awarding such other and further relief as the court deems just and equitable.

DATED: January 16, 2019.

JACKSON LEWIS P.C.

By: 

Mark Crabtree, OSB #015070

crabtreem@jacksonlewis.com

Daniel Moses, OSB #151935

daniel.moses@jacksonlewis.com

Of Attorneys for Defendants

DECLARATION OF SERVICE

I hereby certify that I served the foregoing **DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT** via:

- ☐ Electronic Mail
- ☐ US Postal Service
- ☒ CM/ECF
- ☐ Facsimile Service
- ☐ Hand Delivery
- ☐ UPS

as follows on the date stated below:

D. Michael Dale
Law Office of D. Michael Dale
PO Box 1032
Cornelius, OR 97113
michaeldale@dmichaeldale.net

Corinna Spencer-Scheurich
Northwest Workers' Justice Project
812 SW Washington St., Ste. 225
Portland, OR 97205
corinna@nwjp.org

Attorneys for Plaintiff

DATED this 16th day of January, 2019.

By: s/ Delores Petrich
Delores Petrich

4845-3343-5268, v. 1

DECLARATION OF SERVICE

Jackson Lewis P.C.
200 SW Market St. Ste. 540
Portland OR 97201
(503) 229-0404 | (503) 229-0405 (fax)